

The Catholic University of America, Columbus School of Law

CUA Law Scholarship Repository

Scholarly Articles and Other Contributions

Faculty Scholarship

1979

David Hoffman and the Shaping of a Republican Legal Culture

Maxwell Bloomfield

The Catholic University of America, Columbus School of Law

Follow this and additional works at: <https://scholarship.law.edu/scholar>



Part of the [Legal History Commons](#), and the [Political Science Commons](#)

Recommended Citation

Maxwell Bloomfield, David Hoffman and the Shaping of a Republican Legal Culture, 38 MD. L. REV. 673 (1979).

This Article is brought to you for free and open access by the Faculty Scholarship at CUA Law Scholarship Repository. It has been accepted for inclusion in Scholarly Articles and Other Contributions by an authorized administrator of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

DAVID HOFFMAN AND THE SHAPING OF A REPUBLICAN LEGAL CULTURE*

MAXWELL BLOOMFIELD**

In recent years scholars have paid increasing attention to the concept of "republicanism" as a measure of cultural change in America during the late eighteenth and early nineteenth centuries. To the Revolutionary generation republicanism connoted most obviously a representative form of government, based upon popular sovereignty and limited in its powers by a written constitution. But republican ideology encompassed far more than the restructuring of political institutions. It called for a regenerated society as well, in which men should be encouraged to pursue their individual destinies with a minimum of interference from public authorities. Civic morality and self-determination were closely linked in republican thought, and the theme of a virtuous and productive citizenry permeated much of the literature and art of the new nation.¹

American law during the postrevolutionary decades also developed within a framework of republican principles. The idea of popular sovereignty, as legal historian Morton Horwitz has shown, led many judges to regard themselves less as custodians of a body of timeless precepts than as the creative manipulators of precedents whose legitimacy depended upon popular consent.² In such areas of private law as contracts, torts, and property law, these judicial instrumentalists overthrew the precommercial and antidevelopmental doctrines of an eighteenth-century squirearchy to promote the interests of enterprising merchants and bankers.³ A similar movement from status to contract — from corporatism to individualism — occurred in public law, although in that field judges continued to insist that they were merely the passive expounders of preexisting legal rules. For example, the Marshall Court's innovative use of the

* © National Archives & Records Div., Gen. Serv. Admin. Reprinted by permission. This article was presented at the National Archives 1978 Conference and is to be published in a volume of the proceedings, *The Law and American Society: New Historical Perspectives and Resources*.

** Professor of History and Chairman of Dep't of History, The Catholic University of America. B.A. 1952, Rice University; LL.B. 1957, Harvard University; Ph.D. 1962, Tulane University.

1. See generally N. HARRIS, *THE ARTIST IN AMERICAN SOCIETY* (1966); H. M. JONES, *O STRANGE NEW WORLD: AMERICAN CULTURE: THE FORMATIVE YEARS* (1964); G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787* (1969); Shalhope, *Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography*, 29 WM. & MARY Q. 49 (1972).

2. M. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860*, at 1-30 (1977).

3. *Id.* at 253-54.

contracts clause to guarantee the rights of private entrepreneurs against government regulation in *Trustees of Dartmouth College v. Woodward*⁴ reflected anything but passivity, and was instead an expression of judicial adherence to a republican value system that measured public power by private standards of morality and usefulness.⁵ The release of individual energies formed the core of the republican creed for lawyers no less than for other occupational groups, as the new nation sought to replace a ruler-subject model of social organization with one based upon the principle of free exchange among competing and self-reliant individuals.⁶

One person who contributed to this emerging legal culture was the scholarly Baltimore lawyer David Hoffman, who was a legal educator, publicist, and author of the first important code of legal ethics for American practitioners. Born in 1784 into a prosperous mercantile family, Hoffman was the youngest of eight brothers and the only one who did not become a successful merchant. During his formative years, Baltimore was a boom town, a center for trade with Europe and the West Indies, whose rapidly increasing population made it the third largest city in the country by 1799. Despite this phenomenal growth, however, the community retained many of the characteristics of an eighteenth-century village. A "private and personal society," it was governed by an interlocking elite of merchants and landed gentry whose authority extended over all areas of municipal life.⁷ Republicanism for young Hoffman was thus tinged with notions of hierarchy and social stratification, and was concretely embodied in a burgher government to which his father and several older brothers willingly donated their services.

Few details of Hoffman's early life are known.⁸ He did attend St. John's College in Annapolis, where he completed his studies in 1802 without taking a degree.⁹ Concerning that experience he later complained, "Even my education at Annapolis was very shallow —

4. 17 U.S. (4 Wheat.) 250 (1819).

5. Newmyer, *Justice Joseph Story's Doctrine of "Public and Private Corporations" and the Rise of the American Business Corporation*, 25 DE PAUL L. REV. 825 (1976).

6. For valuable insights into American constitutional development from an anthropological perspective, see G. GARVEY, *CONSTITUTIONAL BRICOLAGE* (1971).

7. G. Browne, *Baltimore in the Nation, 1789-1861: A Social Economy in Industrial Revolution 1-38* (1973) (unpublished Ph.D. dissertation, Dep't of Hist., Wayne State University).

8. No adequate biography of Hoffman exists. The best brief overview of his career is provided by Philbrick, *David Hoffman*, in 5 *DICTIONARY OF AMERICAN BIOGRAPHY* 111-12 (D. Malone ed. 1932). This account needs to be updated in several particulars, however, and should be used with caution.

9. Hoffman's presence at St. John's College may be traced through the class lists published in 13 *BULL. ST. JOHN'S C.* 2 (Sept. 1961).

so that, upon that narrow foundation, I set to work to raise my own superstructure. I am almost wholly self-taught"¹⁰ To what extent that boast might also apply to his legal training remains unclear, since nothing is known of his apprenticeship years. He later advised law students, however, to devote three-fourths of their time to private study and to enter a law office only one year before they took their qualifying examinations. This prescription, which he announced in his earliest publications,¹¹ may well have reflected the nature of his own preparation for the bar.

Several factors contributed to Hoffman's preference for law over business. First, opportunities for lawyers in Baltimore were expanding prodigiously, as the Napoleonic Wars opened up new areas of admiralty and insurance law to add to the already broad range of legal transactions that accompanied rapid municipal growth. Second, as a young practitioner Hoffman could further count on obtaining some lucrative business from the family firm of Peter Hoffman & Sons, dry goods merchants and importers, which by the early nineteenth century had established a London branch under the management of two of David's brothers. But such material considerations probably influenced him less than the prospects for social and intellectual preeminence that he associated with a legal career. Law, after all, was a learned profession, while business was only a trade. Acutely aware of his family's nouveau riche status and lack of serious cultural interests, Hoffman rebelled against such bourgeois complacency by devoting his considerable talents to what he regarded as the more ennobling pursuit of jurisprudence. In a revealing letter written a few years before his death to his only surviving brother Samuel, he charged:

You, my only brother, valued wealth and fashion of a certain kind — I valued *mental* riches, and fashion of no kind. . . . Had I seen fit at any time, to *loom large*, I might have secured to myself advantages, too much prized by the world at large — but I went for a much more exalted game. . . . If . . . there be any merit in suggestive industry, in prudence, and in the faithful discharge of duties, I *ought* to have grown rich. I have always lived as a gentleman everywhere; I never had any bad habits

10. Letter from David Hoffman to Samuel Hoffman (undated) (Hoffman Family Papers, Md. Hist. Soc'y, Baltimore, Md.). The first four pages of this 28-page letter are missing, but internal evidence clearly establishes that it was written from London in 1851 or 1852.

11. See, e.g., D. HOFFMAN, A COURSE OF LEGAL STUDY: RESPECTFULLY ADDRESSED TO THE STUDENTS OF LAW IN THE UNITED STATES 187 (Baltimore 1817) [hereinafter cited as D. HOFFMAN, COURSE OF LEGAL STUDY].

whatever; my *time* has been nourished, under all circumstances, and in all countries, with exemplary diligence. I preferred everywhere *no society*, unless the best could be obtained. I care not for the mere *nouveau riche*, and still I highly value the wealth acquired by honest and industrious cleverness: but the ridiculous *Exclusives* in the U.S., or anywhere, who *dare* to value a man only by the extent of his purse, involuntarily fill me with sadness and pain. Good taste, elegant hospitality, intellectual society, and people of high worth, have been the sole objects of myself, and of my little family.¹²

The tone, no less than the content, of the passage provides some valuable clues for understanding Hoffman's personality and lifelong obsessions. Despite his impressive scholarly achievements he was always insecure, vain, and neurotic — hungry for the deference and material comforts to which he believed intellectuals were automatically entitled. He was driven to work twelve to fourteen hours a day to prove to nonscholars (and especially to his brothers) that his vocation was as demanding and productive as theirs. Although he criticized his relatives for their snobbery and social exclusiveness,¹³ he was himself an accomplished name-dropper who assiduously cultivated the "best people" on both sides of the Atlantic. That the "best" so often proved to be members of old landed families was not surprising, given Hoffman's schizophrenic attitude toward money-making and his conviction — derived from his favorite philosopher, James Harrington — that the political leadership of a gentry class was indispensable to a sound republican government.¹⁴ In any event, Hoffman's moth-like flutterings about the socially elect early won him the reputation of a dandy, which he never quite managed to

12. Letter from David Hoffman to Samuel Hoffman (undated), (Hoffman Family Papers, Md. Hist. Soc'y, Baltimore, Md.).

13. The Hoffmans were a pretty stuffy lot, to judge by the following anecdote involving one of David's brothers:

Mr. John Hoffman was a well-known bachelor, of whom the story was told, that on one occasion, being in the country with a party of ladies and gentlemen, and among them one of his cousins, who was extremely ceremonious; as they were all walking upon the lawn, a large Peacock, with its head and crest erect, and every feather spread, marched straight up to him, and he immediately saluted the Bird of Juno, taking off his hat to it, and exclaiming, "A Hoffman, by Jove!"

The incident is related in C. TIERNAN, *THE TIERNAN FAMILY IN MARYLAND* 183 (1898).

14. Hoffman discussed Harrington's work at some length in D. HOFFMAN, *LEGAL OUTLINES, BEING THE SUBSTANCE OF A COURSE OF LECTURES NOW DELIVERING IN THE UNIVERSITY OF MARYLAND* 427-40 (Baltimore 1829) [hereinafter cited as D. HOFFMAN, *LEGAL OUTLINES*].

shake off.¹⁵ Consequently, in revenge he spent his later years warning law students against entering "too early into the circles of the gay," and advising them to "avoid all eccentricity."¹⁶

When Hoffman began his practice, of course, the Baltimore bar itself was notorious for both eccentricity and affectation. Having survived the Revolution with no appreciable loss of prestige or power, Maryland's attorneys showed little inclination to treat the average client as an equal.¹⁷ While the legal community in Baltimore grew from sixteen in 1779 to forty-three in 1810,¹⁸ no corresponding democratization of personnel or mores took place.¹⁹ Most of the new practitioners were the sons of merchants or gentry, who strove to emulate the courtly manners and lavish life style of such bar leaders as William Pinkney and Robert Goodloe Harper. Bar admission requirements remained high, in contrast to the situation in some other states. Prospective lawyers in Maryland had to study law for at least three years before they could apply to a judge for an examination and a license. The acknowledged competence of Baltimore's practitioners in the early nineteenth century led one local enthusiast to assert that his city's bar was "the ablest of our country, and by far the haughtiest."²⁰

Hoffman was temperamentally well equipped to thrive in such high-toned surroundings. Methodical, hardworking, and learned, he

15. For an impression of Hoffman's early days as a fashionable "beau," see SISTER M. F. LOCHMES, ROBERT WALSH: HIS STORY 30 (1941). Note, too, the following irreverent comments from a friend:

I saw [Hoffman] as I passed through Philadelphia. He was at first at a distance, but the true Hoffman straddle I could not mistake. There is nothing like to it in Heaven above or on the Earth beneath — & upon nearer approach the identity of our beloved Professor elect was confirmed — having under his wing some of the handsomest girls I had an opportunity of seeing in that "Athens of America" as he was one day pleased to call it.

Letter from Levi Peirce to John Pendleton Kennedy (Jan. 8, 1816) (John Pendleton Kennedy Papers, Peabody Institute, Baltimore, Md.).

16. Hoffman's cautionary recommendations appeared, respectively, in his books A LECTURE, INTRODUCTORY TO A COURSE OF LECTURES, NOW DELIVERING IN THE UNIVERSITY OF MARYLAND 37 (Baltimore 1823) [hereinafter cited as D. HOFFMAN, INTRODUCTORY TO A COURSE OF LECTURES]; and in the enlarged version of 1 A COURSE OF LEGAL STUDY, ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY 52 (Baltimore 2d ed. 1836) [hereinafter cited as D. HOFFMAN, COURSE OF LEGAL STUDY (2d ed.)].

17. For a discussion of the state of the Maryland bar before and after the Revolution, see Nolan, *The Effects of the Revolution on the Bar: The Maryland Experience*, 62 VA. L. REV. 969 (1976).

18. G. Browne, *supra* note 7, at 96.

19. See generally Nolan, *supra* note 17, at 980-90.

20. J. NEAL, WANDERING RECOLLECTIONS OF A SOMEWHAT BUSY LIFE 163 (Boston 1869).

soon built up an enviable practice in the state and federal courts, while enhancing his social status through his marriage in 1816 to Mary McKean, daughter of a prominent Philadelphia merchant and granddaughter of Thomas McKean, a former Governor and Chief Justice of Pennsylvania. Shortly thereafter his professional income rose to \$9,000 a year — more than twice the earnings of most Baltimore lawyers.²¹ But the demands of an extensive practice and of a crowded social calendar by no means exhausted his energies during these years. He also found time to pursue an heroic program of reading in general legal literature, as a preparation for taking up a new and congenial vocation, the teaching of law in the recently established University of Maryland.

The nucleus of the University of Maryland was a private medical school which the state took over in 1812, with the avowed intention of adding faculties of law, theology, and arts and sciences to form a comprehensive educational unit. Hoffman had been an early advocate and fundraiser for the project, which promised to make his city in time the cultural peer of its archrival, Philadelphia. But legislative niggardliness and public apathy combined to prevent the implementation of the plan. Although the medical school was enlarged and strengthened, no public aid was extended to the other departments, which remained mere paper constructs for another decade.²² Despite this unpromising situation, Hoffman accepted an appointment as Professor of Law in 1814, and set to work with characteristic intensity to develop a suitable curriculum. The result of his labor was published three years later as *A Course of Legal Study*.²³

This volume, which won for its author international acclaim, provided the student with a systematic bibliographical guide to every branch of law. Not content to offer his readers merely another gloss on Blackstone's *Commentaries*, Hoffman moved well beyond Anglo-American doctrines and procedures to an illuminating

21. Hoffman reported that his professional earnings averaged \$9,000 a year from 1818 to 1823 in a letter to the Trustees of the University of Maryland (Sept. 27, 1826), reprinted in D. HOFFMAN, *INTRODUCTORY LECTURES, AND SYLLABUS OF A COURSE OF LECTURES, DELIVERED IN THE UNIVERSITY OF MARYLAND; NOW RE-PUBLISHED IN REFERENCE TO THE RESIGNATION OF THE MEDICAL AND LAW PROFESSORSHIPS IN THAT INSTITUTION* 341 (Baltimore 1837) [hereinafter cited as D. HOFFMAN, *INTRODUCTORY LECTURES*]. A contemporary practitioner, John H. B. Latrobe, later recalled that few professional men in Baltimore made more than \$4,000 a year around that time. See R. SEMMES, *BALTIMORE AS SEEN BY VISITORS, 1783-1860* at 92 (1953).

22. See generally G. CALLCOTT, *A HISTORY OF THE UNIVERSITY OF MARYLAND* (1966); E. CORDELL, *1 UNIVERSITY OF MARYLAND, 1807-1907* (1907).

23. D. HOFFMAN, *COURSE OF LEGAL STUDY*, *supra* note 11.

examination of Roman law and modern Continental jurisprudence. The eclecticism of his approach, which reflected a breadth and depth of scholarship attained by few of his contemporaries, dazzled reviewers. "What particularly pleases us," wrote Joseph Story in the prestigious *North American Review*, "is the enlarged and liberal view with which Mr. Hoffman recommends the student of the common law to a full and careful study of the admiralty, maritime and civil law." Hoffman's *Course*, he concluded, "contains by far the most perfect system for the study of the law, which has ever been offered to the publick."²⁴

If not the most perfect model of legal instruction, it was certainly the most demanding. Hoffman estimated that it would take an industrious student six years to read all of the books he recommended, although with some judicious pruning the essentials of the course might be mastered in four years of sustained effort.²⁵ Because most prospective lawyers, then as later, were eager to dispense with all unnecessary learning and get on to the business of fee collecting, the difficulty of attracting students to an all-embracing program of legal training should have given even the most zealous pedagogue second thoughts. But Hoffman justified his enterprise on two grounds: the leadership needs of a decaying republican society and the philosophical interrelatedness of all legal subjects.

By the time he delivered his first lecture at the Maryland Law Institute in October 1822, the nation was undergoing one of its recurrent crises of confidence in republican institutions. The Panic of 1819 and the Missouri controversy had revealed serious flaws in the body politic that conservatives attributed to irresponsible leadership and a waning public morality. Concerned at the threat of further social disorganization, bar leaders called for the establishment of national law schools to promote uniformity of thought on legal issues and to train a new generation of statesmen in the enlightened ways of the Founding Fathers. A well-conducted law school, observed William Wirt, was the nation's best hope for reviving "the race of those great men in our profession who shone forth at the close of the revolutionary war."²⁶ Echoing Wirt's sentiments, the erudite Philadelphia lawyer Peter DuPonceau spelled out in detail

24. Story, *Art. III. A course of legal study respectfully addressed to the Students of Law in the United States*. By David Hoffman, 6 N. AM. REV. 45, 75-76. (1817).

25. D. HOFFMAN, *COURSE OF LEGAL STUDY*, *supra* note 11, at xxviii-ix.

26. Wirt's remark, which referred specifically to the school of Judge Walter Dorsey, was made in the course of a letter published in *Am. and Com. Daily Advertiser* (Baltimore), May 19, 1823, under the heading *Law School in Baltimore*.

the advantages to be anticipated from such national law centers: "With a succession of able professors the genuine spirit of our law may be preserved through a series of ages; legislative innovations, if not prevented, may be directed into a proper channel, and uniformity in judicial decisions may be in a great degree, if not entirely, secured."²⁷ That Hoffman shared these objectives is apparent from his introductory lecture, in which he defended his exhaustive program on the ground that it was designed to produce legislators and statesmen no less than practitioners and judges.²⁸

But there was a more fundamental rationale for his broad-gauged approach to legal study. Like other jurists of his day, he conceived of law as a network of interrelated principles that underlay all human activity:

Law, in its most comprehensive signification, is that system of rules to which the intellectual and physical worlds are subjected; either by *God* their creator, or by *man*; by which the existence, rest, motion, and conduct of all created and uncreated entities are regulated, and on the due observance of which their being or happiness depends.²⁹

Such a sweeping formula virtually equated law with culture, and compelled prospective lawyers to master the rudiments of the moral and physical sciences before proceeding to specific legal subjects.

"[W]e assume it as undeniable that pure Ethics and Natural Law lie at the very foundation of all laws," Hoffman argued.³⁰ A firm believer in the unity of mankind and the unchangeableness of human nature, he saw nothing incongruous in recommending the precepts of the Roman and Hindu codes as legal guides for nineteenth-century America. Since, in his view, man had been created a free and responsible moral agent, and since all legal questions ultimately resolved themselves into moral issues, republican jurists could only profit from the recorded experience of their

27. DuPonceau, *An Address delivered at the opening of the Law Academy of Philadelphia*, J. OF JURIS. 216 (1829).

28. And as it is from those who have been *students* of this profession, if not from its *practitioners*, that the nation draws the largest portion of its legislators and statesmen, there is an obvious reason for somewhat enlarging the circuit of the law student's acquirements, arising from this probable combination of the counsellor with the politician.

D. HOFFMAN, INTRODUCTION TO A COURSE OF LECTURES, *supra* note 16, at 19.

29. D. HOFFMAN, COURSE OF LEGAL STUDY, *supra* note 11, at 31.

30. D. HOFFMAN, 1 COURSE OF LEGAL STUDY, (2d ed.), *supra* note 16, at 82.

counterparts in other societies.³¹ Roman law and its offspring — the civil law of modern Europe — in particular provided a valuable repository of neutral principles to which American judges might resort when common law precedents were weak or lacking.³² As a practitioner, Hoffman successfully invoked both Roman and civil law doctrines as auxiliary authorities in a number of important maritime and commercial cases that he argued before the Marshall Court in the 1820's. While he conceded that the civil law was somewhat defective in its treatment of persons, he hailed the superior protection it afforded to property rights.³³

Through his first nine lectures, which he published separately in 1829 under the title *Legal Outlines*,³⁴ he further elaborated the tenets of "universal morality" that ostensibly guided his jurisprudence. These tenets he derived from a mass of works on philosophy, metaphysics, physiology, psychology, and political theory. Designed as an elementary textbook to be read by students before they took up Blackstone and Kent, *Legal Outlines* provides twentieth-century researchers with their most authoritative tool for understanding the philosophical premises that influenced the jurists of the early republic.

For all Hoffman's talk of timeless moral principles, however, his legal system was neither static nor overly deductive. No one better appreciated the importance of hard facts or the need to test abstract formulas by the light of common sense and daily experience. As an early advocate of historical jurisprudence, he was accustomed to think of problems in evolutionary terms and to pay close heed to the particular societal context in which they arose. Convinced that logic was indeed the life of the law, he also believed that logic must be constantly tempered by experience to take account of expanding human needs and aspirations. But the adjustment of ideal norms to passing realities was a delicate business at best, to be entrusted only to skilled professionals — including, of course, that band of

31. For Hoffman's views on human nature and moral responsibility, see D. HOFFMAN, *LEGAL OUTLINES*, *supra* note 14, at 10-64.

32. Hoffman discussed the importance and utility of Roman law in D. HOFFMAN, *A LECTURE, BEING THE NINTH OF A SERIES OF LECTURES, INTRODUCTORY TO A COURSE OF LECTURES NOW DELIVERING IN THE UNIVERSITY OF MARYLAND* (Baltimore 1832).

33. See, e.g., *Buck v. Chesapeake Ins. Co.*, 26 U.S. (1 Pet.) 151 (1828); *The Monte Allegre*, 22 U.S. (9 Wheat.) 616 (1824).

34. D. HOFFMAN, *LEGAL OUTLINES*, *supra* note 14.

scientifically trained lawyers whom he and other legal educators were laboring to create.³⁵

Unhappily, student response to Hoffman's ambitious program was less than overwhelming, although he modified his plans from year to year in an effort to improve their attractiveness. Central to his design was one objective from which he never departed, however: to offer more comprehensive instruction in both subject matter and practice than had been attempted in any previous law school. Acknowledging the stiff competition provided by the prevailing system of law office apprenticeship, he stressed the practical aspects of his training as an alternative. Thus, he promised prospective students not only the benefit of 301 projected lectures, but also a thorough grounding in legal draftsmanship and in the preparation of all forms incident to the management of a lawsuit from beginning to end. To promote group study and esprit de corps among students, he further insisted that all their training should take place under one roof, claiming to follow in this regard the example set by the Inns of Court and the centralized law schools of the Roman Empire.³⁶

Hoffman announced this plan in an early newspaper advertisement:

[A] commodious building will be taken, and my library, already large and valuable, be provided especially with all the elementary works and treatises. These institutionary works, with the reports and books of reference most frequently resorted to, will be deposited in a common reading room. The student will be required to argue points of law adapted to his progress, to prepare the pleadings requisite to present the subjects for discussion, and to note the minutiae of practice, (with their differences in different states), through the progressive stages of a suit. Every other facility will be provided to aid him in an

35. There are morals in politics, as well as in religion, from which individuals no less than nations should never depart; and we are satisfied that changes, whether in constitutions, customs, laws, or practices, should not be lightly and irreverently made; but to be salutary, they should be the gradual and well digested result of the deliberations of wise heads and sound hearts.

D. HOFFMAN, 1 *COURSE OF LEGAL STUDY* (2d ed.), *supra* note 16, at 438.

36. D. HOFFMAN, *INTRODUCTORY TO A COURSE OF LECTURES*, *supra* note 16, at 36-40, 56, 72. He outlined his plans for the teaching of practice, which included the creation of an extensive set of moot courts, in *A LECTURE, BEING THE THIRD OF A SERIES OF LECTURES, NOW DELIVERING IN THE UNIVERSITY OF MARYLAND* (Baltimore 1826). For first-hand accounts of Hoffman's ability as a lecturer and moot court judge, see *Remarks on Mr. Hoffman's Course of Law Lectures*, *Am. and Com. Daily Advertiser* (Baltimore), Aug. 5, 1823; *University of Maryland*, *Am. and Com. Daily Advertiser* (Baltimore), June 5, 1827.

extensive course of legal education; and the Institution will be governed by such rules as are necessary to study and good order.³⁷

Despite, or perhaps because of, these elaborate provisions, only seven students attended Hoffman's Law Institute during its first year. Thereafter attendance figures climbed gradually upward, to reach a level of forty registered students at one point.³⁸ While the later totals compared favorably with reported enrollments at other law schools in the 1820's,³⁹ it is impossible to tell how transient this student population was. Hoffman undercut his argument for systematic and progressive study at the outset by suggesting that students might begin at any division of his syllabus. Soon this permissive attitude hardened into a formal recruitment device, as he invited students in his printed circulars to join his classes "for any period not short of three months." But this bid for increased patronage did not produce the results he anticipated, and his pedagogical difficulties were compounded by ill health and recurrent financial wrangles with the trustees of the university. Convinced that he had never received the state aid to which he was legally entitled, he stopped teaching in 1832, although he did not formally resign his professorship until four years later.⁴⁰ During the decade of his school's active life (1822-1832), he claimed to have taught students from eleven states and two foreign countries.

The collapse of Hoffman's educational experiment left him free to resume his once profitable law practice, but he was reluctant to do so. The state of both politics and jurisprudence in the late 1830's filled him with dismay, and appeared to jeopardize the very basis of republican government as he understood it. Whereas the Founding Fathers had feared popular majorities and had developed an elaborate system of checks and balances to restrain them, Jacksonian Democrats seemed bent on overthrowing all barriers to the immediate exercise of the popular will. Congress and the Presidency

37. LAW INSTITUTE. TO STUDENTS OF LAW, *Am. and Com. Daily Advertiser* (Baltimore), Sept. 12, 1822.

38. Hoffman reported these figures in D. HOFFMAN, *INTRODUCTORY LECTURES*, *supra* note 21, at v.

39. Attendance figures at other law schools are recorded in A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 451 (Carnegie Foundation Bull. No. 15, 1921).

40. Hoffman's side of the controversy with the trustees is documented in the series of letters he published as item 8 (*Letters, &c. to the Trustees, &c.*) in D. HOFFMAN, *INTRODUCTORY LECTURES*, *supra* note 21, at 3-36. See also E. CORDELL, *supra* note 22, at 337-48.

had already capitulated to the power of organized party machines, and even the Supreme Court appeared no longer immune to democratic pressures. Under the leadership of Roger Taney, judges were now more willing to sanction rash legislative innovations and to appeal to their own avowed policy preferences, rather than the neutral rules of natural law, as justification for overturning established precedents. Everywhere the traditional society of the late eighteenth century, with its cohesive elite leadership, was in visible decline. Hoffman had only to look about his native Baltimore for concrete evidence of the leveling process at work. There the old merchant and gentry groups had been forced to share political power with manufacturers and skilled laborers, and the city government was moving to assert its control over essential public services that had hitherto been entrusted to private entrepreneurs.⁴¹ In Hoffman's view this trend toward a more public and pluralistic society pointed toward eventual mob rule of the sort he had personally experienced as a young lawyer in 1812, when his attempt to defend an unpopular editor from a riotous mob almost cost him his life.⁴²

He protested against the debasement of professional mores that he perceived in the Jacksonian era by including a lengthy code of ethics for practitioners in the second edition of his *Course of Legal Study*, which he published in 1836.⁴³ These *Fifty Resolutions in Regard to Professional Deportment* are most notable for their refusal to separate private from public morality, or to admit that practitioners might ever be guided by norms that did not equally apply to all other citizens. "What is morally wrong, cannot be professionally right, however it may be sanctioned by time or custom," Hoffman asserted.⁴⁴ And neither loyalty to client nor compliance with the technicalities of the legal process could absolve an attorney from obeying the dictates of conscience and striving to do substantial justice to all parties. Hoffman carried the latter principle to the point of insisting that a practitioner was morally bound *not* to use all available legal defenses for his client when injustice would thereby

41. G. Browne, *supra* note 7, at 120-206, 263-314. See also Ridgway, *The Search for Power: Community Leadership in the Jacksonian Era*, in *LAW, SOCIETY, AND POLITICS IN EARLY MARYLAND* 305-09 (A. Land, L. Carr & E. Papenfuss eds. 1977).

42. "Professor Hoffman would have been strung up, without judge or jury, on a tree-branch, yet overhanging Jones's Falls, but for the providential interference of a stranger, who satisfied the murderers that they had got hold of the wrong man." J. NEAL, *supra* note 11, at 206. For the background to this outburst of mob violence, see Cassell, *The Great Baltimore Riot of 1812*, 70 MD. HIST. MAGAZINE 241 (1975).

43. D. HOFFMAN, *COURSE OF LEGAL STUDY* (2d ed.), *supra* note 16.

44. *Id.* at 765.

result. "I will never plead the Statute of Limitations, when based on the *mere efflux of time*," he noted in a representative passage, "for if my client is conscious he owes the debt; and has no other defense than the *legal bar*, he shall never make me a partner in his knavery."⁴⁵ He attempted to carry out these ideals in his own practice, but was criticized for impracticality and neglect of his clients' interests.⁴⁶

With the publication of his revised *Course*, Hoffman abandoned law for belles lettres and spent his remaining years in fruitless attempts to write a best seller.⁴⁷ That he ever imagined he might succeed — given his literary style and taste in subject matter — testifies to both his naiveté and his unconquerable self-esteem. He first published two books of social criticism,⁴⁸ designed to prove that "ultra democracy" was the cause of every evil in national life, from juvenile delinquency and marital infidelity to the "decline of higher drama" and a "less refined tone of conversation."⁴⁹ When these broadsides failed to win public favor, he reluctantly stopped work on the remaining eighteen books he had planned to round out his *Centre Table Series* and turned to other projects.⁵⁰

Hoffman's last great effort was a six-volume novel titled *Chronicles of Cartaphilus*, in which he undertook to describe the history of the western world from the time of Christ to the middle of the nineteenth century, as seen through the eyes of the Wandering Jew. Mercifully, he lived to see only two volumes through the press;⁵¹

45. *Id.* at 754.

46. Hoffman's efforts to secure justice for both sides in one lawsuit are detailed in Letter from David Hoffman to Francis Scott Key (April 12, 1828) (Ridgely Papers, Md. Hist. Soc'y, Baltimore, Md.).

47. Hoffman did not give up his law practice completely until 1847, when he moved to England to write. In the early 1840's he was active in Whig politics in Maryland, and from 1844 to 1847 he conducted a private law school in Philadelphia. For further details concerning his later career, see Letter from David Hoffman to William Henry Harrison (March 24, 1841) (Letters of Application and Recommendation during the Administrations of Van Buren, Harrison, and Tyler, Record Group 59, National Archives Microfilm Publication M687, roll 16). See also Letter from David Hoffman to Samuel Hoffman (undated) (Hoffman Family Papers, Md. Hist. Soc'y, Baltimore, Md.).

48. A. GRUMBLER, MISCELLANEOUS THOUGHTS ON MEN, MANNERS, AND THINGS (Baltimore 1837); D. HOFFMAN, VIATOR; OR, A PEEP INTO MY NOTE BOOK (Boston 1841).

49. A. GRUMBLER, *supra* note 48, at 191-92.

50. Hoffman discussed his publishing plans and difficulties at length in his private correspondence. See Letter from David Hoffman to Charles Sumner, (August 30, 1841) (Charles Sumner Papers, Harvard University, Cambridge, Mass.).

51. The first two volumes appeared under the title D. HOFFMAN, CHRONICLES SELECTED FROM THE ORIGINALS OF CARTAPHILUS, THE WANDERING JEW (London

but even in its truncated form, this extraordinary mishmash deserves a high place on any list of the ten most boring productions in world literature. With uncanny accuracy the Baltimore lawyer and novelist John Pendleton Kennedy captured the essence of the work after reading only one chapter in manuscript:

I would not be surprised if it be all ready for the press in huge and painful volumes, and should be as minute as the old patristic writings in the history of every heresy from first to last, with immense resource of reading and authority scattered through voluminous notes — all which Hoffman would conceive to be but in the fashion of the Pickwick papers and to be carried about as light reading for travellers.⁵²

These later ventures into literature were a logical extension of Hoffman's lifelong interest in law as an integral part of a broader cultural matrix. In his case one might say that culture gradually swallowed law, so that *Cartaphilus* appears less an aberration than a fitting capstone to his career. It is not too surprising, after all, that the son of pious German-born parents should devote his last years to theological researches, or that the student of comparative jurisprudence should be led to explore larger questions of historical change. But his enduring significance derives from his purely legal efforts. A pioneer legal educator and scholar, he suffered the fate common to pioneers of seeing his own fame eclipsed by the greater celebrity of those who came after him and built upon the foundations he had laid.

In legal education, for example, his friend Joseph Story achieved at the Harvard Law School the kind of spectacular success that eluded Hoffman at Maryland.⁵³ Story at first adopted Hoffman's curriculum with only slight modifications, but soon financial pressures and low enrollments forced him to make some fundamental readjustments. Like Hoffman, he ignored formal residence requirements and encouraged students to come for any period of time they pleased. But he also restructured and compressed his program by eliminating all subjects that were not immediately useful to

1853). A third volume, published after Hoffman's death in 1854, carried the story only to the end of the ninth century. The remaining three volumes, though complete in manuscript form, were never published.

52. Letter from John Pendleton Kennedy to Edward Everett (May 19, 1853) (John Pendleton Kennedy Papers, Peabody Institute, Baltimore, Md.).

53. For a discussion of Story's reorganization of the Harvard Law School, see A. REED, *supra* note 39, at 142-50, 453-56.

practitioners. Story's new curriculum at Harvard encompassed little more than common law doctrines as developed by English and American judges and an exposition of the federal constitution.⁵⁴ With this narrowing of focus the school prospered, becoming by the 1850's a model for other institutions around the country. The price of success was high, however; academic legal training was thereafter insulated from any fruitful contact with those humanistic and scientific subjects that Hoffman considered essential to the formation of any lawyer above the level of a "mere technician."

As the goals of legal education were redefined and narrowed, professional ethics underwent a comparable process of reevaluation. Here the catalyst was Judge George Sharswood of Philadelphia, whose *Essay on Professional Ethics*,⁵⁵ first published in 1854, became the standard work on the subject for the next century. Sharswood was familiar with Hoffman's *Fifty Resolutions* and agreed with many of their specific recommendations. But on such basic questions as the nature and extent of professional accountability, the two men were poles apart. Where Hoffman referred all problems to the practitioner's conscience — that mirror of universal morality — Sharswood opted for the external guidelines provided by the legal process itself. "The lawyer," he argued, "who refuses his professional assistance because in his judgment the case is unjust and indefensible, usurps the functions of both judge and jury."⁵⁶ Because the justice or injustice of a cause could be determined only after all the technical rules of litigation had been fully satisfied, every client was entitled to the best possible legal representation. Sharswood thus severed the tie between public and private morality and replaced Hoffman's uniform moral standards with a set of professional norms that often clashed with the attitudes of the man in the street.

To younger lawyers, born into a world of democratic hoopla and feverish technological change, Hoffman's gentility and cosmopolitan scholarship seemed anachronistic at best. Even his famous *Course of Legal Study*, which in its first edition had sold out within

54. *Id.* at 148.

55. G. SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS (6th ed. 1930). On the continuing importance of Sharswood's views for twentieth-century practitioners, see J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 40-52 (1976).

56. G. SHARSWOOD, *supra* note 55, at 84.

eighteen months of publication,⁵⁷ failed to attract a substantial readership when he republished it in 1836. Better suited to the pragmatic spirit of the age was a rival publication from England, Samuel Warren's *A Popular and Practical Introduction to Law Studies* (1835). "The legal profession . . . have purchased five copies of Warren's Course of L.S. to one of mine," Hoffman complained.⁵⁸ The Warren book made no claim to serious scholarship, and addressed itself exclusively to students of the common law. But it was written in a fluent and engaging style (as befitted an author who was a popular novelist as well as a barrister), and contained much personal advice on how to get ahead at each stage of one's professional development.

Hoffman could not have written such a book even if he had wanted to, for he conspicuously lacked the common touch. A transitional figure who combined the rationalism of the Enlightenment with the romantic strivings of the nineteenth century, he was often unwittingly comic in his earnest efforts to save his countrymen from the perils of democracy. But his vision of an enlightened professional elite was a worthy and demanding one. In his pursuit of that ideal and in his firm commitment to a humanistically informed legal science, he merited the tribute once paid to him by the wife of Justice John McLean: "Mr. D. Hoffman was not appreciated in Baltimore, because he is in advance of them."⁵⁹

57. See the lengthy advertisement for D. HOFFMAN, COURSE OF LEGAL STUDY (2d ed.), *supra* note 16, that appeared in Am. and Com. Daily Advertiser (Baltimore), Nov. 11, 1837, at 1. For an account of the size and circulation of the first edition, see Letter from David Hoffman to Willard Phillips (Nov. 24, 1831) (Willard Phillips Papers, Mass. Hist. Soc'y, Boston, Mass.).

58. Letter from David Hoffman to Charles Sumner (Aug. 12, 1837) (Charles Sumner Papers, Harvard University, Cambridge, Mass.) The passage of time only deepened his bitterness at the success of Warren's book:

I know, that Warren made ample use of my work, without the least notice of the author — and that my suggestion (much in detail) gave rise to Smith's Leading Cases — to other like works — to the work on Legal Judgments, &c.; as also to the books entitled "Cases overruled — doubted — denied," &c., all of which suggestions never were found in any work before mine — nor was there ever any thorough *Course of Study* before mine. We had absolutely nothing on legal study — and no course before 1817, when my little volume appeared. There was a letter or two on legal studies — and the little volume entitled *Study of Law*, attributed by some to McIntosh — but the subject was for the first time, here or in England, presented in something of an imposing [way] by my work: and yet Warren is everywhere — Hoffman almost nowhere in this country!

Letter from Hoffman to Sumner (Aug. 4, 1847) (Sumner Papers).

59. Letter from David Hoffman to Samuel Hoffman (undated) (Hoffman Family Papers, Md. Hist. Soc'y, Baltimore, Md.) (quoting Mrs. McLean's remark).